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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,644	11/13/2001	Jonathan S. Goldick	MS146892.40062.94US01	6276

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EXAMINER

GIANOLA, JOHN F

ART UNIT	PAPER NUMBER
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2145

DATE MAILED: 02/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/992,644	GOLDICK, JONATHAN S.	
	Examiner	Art Unit	
	John F Gianola	2135	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20020213</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 10 and 12 are rejected under 35 U.S.C. 101 because the claimed inventions, respectively, are directed to non-statutory subject matter. Both Claim 10 and Claim 12 are directed towards "A computer program product readable by a computer and encoding instructions for executing..." Per the Manual of Patenting Procedure (MPEP) 2106, functional descriptive material becomes statutory when it "...is recorded on some computer-readable medium..." Computer code alone constitutes "functional descriptive material" and as such, is not statutory subject matter. The inventions in these two claims are directed towards a computer program not interrelated to a medium. As such, these two claims disclose non-statutory inventions.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-9, 11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brealey et. al. "Locking Tool Data Objects in a Framework Environment" (US Pat. No. 6,026, 401) in view of Groza "Distributed Framework for Instrumentation Hardware/Software Codesign" (see the attached Notice of References Cited).

7. Brealey et. al. teach,

With respect to Claims 1, 10, and 12:

Receiving a request to access the resource, wherein the request originates from a requesting client computer system (see column 7, lines 34-42 and lines 44-49 and column 8, lines 46-52 and note also Groza: column 2, Section II, lines 4-9);

Creating a lock having a predetermined type, wherein the predetermined type provides availability to other client computer systems for predetermined purposes (see column 7, lines 38-50 and column 7 line 65 to column 8, line 1);

Providing a lock token related to the created lock to the requesting client computer system (column 7, lines 44-50 and Column 8, line 57 to Column 9, line 2); and

Performing the requested access (see column 7, lines 5-6 and 65-67);

8. With respect to Claim 2:

Wherein the request to access the resource provides an indication as to the type of access and to the type of lock to be created during the access, said method further comprising:

Prior to the act of creating a lock, determining whether the resource is locked by another client computer system (see column 7, lines 38-46); and

Wherein the act of creating a lock only occurs if no existing lock conflicts with the type of access requested or the type of lock requested (see column 7, lines 49-50; column 6, lines 50-56; and column 8, line 67 to column 9, line 2);

9. With respect to Claim 3:

Wherein the predetermined type of the lock provides other client computer systems access to the resource for the purpose of reading the resource (see column 8, line 44);

10. With respect to Claim 4:

Wherein the predetermined type of the lock provides other client computer systems access to the resource for the purpose of writing the resource (column 8, lines 49-56);

11. With respect to Claim 5:

Wherein the predetermined type of the lock provides other client computer systems access to the resource for the purpose of deleting the resource (see column 5, lines 53-60 and column 8, line 58 to column 9, line 2);

12. With respect to Claim 6:

Wherein the predetermined type of the lock provides other client computer systems access to the resource for the purpose of two of the following: reading, deleting and writing the resource (see column 8, line 45);

13. With respect to Claim 7:

Wherein the resource may be locked by more than one client computer system (column 8, lines 49-54);

14. With respect to Claim 8:

Wherein the requesting client computer system requests the type of lock to be created and a server computer system creates and maintains the lock (see column 7, lines 38-46 and lines 56-58 and column 8, lines 1-3);

15. With respect to Claim 9:

Wherein the lock is advisory (because, as applicant writes on page 20, line 23 of the application, "An advisory lock may or may not be honored," an advisory lock, as in a lock that may or may not be honored, is disclosed in column 10, lines 3-6);

16. With respect to Claim 11:

Receiving an access request for the resource from a requesting client computer system (see column 7, lines 34-49 and column 8, lines 46-52 and note also Groza: column 2, Section II, lines 4-9);

Determining whether the resource is locked by another computer system (see column 7, lines 38-50, column 8, line 67 to column 9, line 2);

If the resource is locked by another computer system with a conflicting advisory lock then denying access if the requesting client computer system honors advisory locks (see column 6, lines 50-56; also note the treatment of Claim 9);
and

Performing the access if the requesting client computer system does not honor the advisory lock or if the resource is not locked with a conflicting lock (see column 10, lines 3-6 and column 6, lines 50-56; also note the treatment of Claim 9).

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17. Brealey et. al. disclose their invention as operating in a framework (see column 4, lines 15-18), and describe memory access as “peer to peer,” but they do not fully disclose a functional distributed environment. Groza, on the other hands, does teach a distributed framework (Groza, column 2, Section II, lines 4-9). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the framework of Brealey et. al. with Groza’s functional distributed environment framework because Groza teaches operating in a function distributed framework to allow for a “network transparent invocation of computation objects (Groza, column 2, Section II, lines 7-8).

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant’s disclosure. Brealey et. al. “Hierarchical Metadata Store for An Integrated Development Environment” (US Pat. No. 6,044,217); Johnson et. al. “Distributed File Access Structure Lock” (US Pat. No. 5,175,852); Montague et. al. “Controlling Access to Objects on Multiple Operating Systems” (US Pat. No. 5,675,782); Morinaga et. al. “File Managing System for Managing Files Shared with a Plurality of Users” (US Pat. No. 5,724,578).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John F Gianola whose telephone number is (571)272-3848. The examiner can normally be reached on Mon - Fri (8:30 - 5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Harvey can be reached at (571)272-3896. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jfg

V. Martin Wallace
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Supervisory Patent Examiner